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No. 10-1407

Supreme Court, U.S.
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In The

Supreme Court of the United States

JASON MATTHIS,

Petitioner,

v.

THE STATE OF LOUISIANA
AND BURL CAIN, WARDEN,
THE LOUISIANA STATE PENITENTIARY,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JASON MATTHIS	**CIVIL ACTION**
VERSUS	**NO. 08-4049**
BURL CAIN, WARDEN LOUISIANA STATE PENITENTIARY	**SECTION: "B"(5)**

ORDER AND REASONS

Before the court is Petitioner Jason Matthis' objections to the May 27, 2009 Report and Recommendation of United States Magistrate Judge Alma Chasez, who recommended that the petition of Mr. Matthis 28 U.S.C. § 2254 habeas claims be dismissed with prejudice as untimely. (Rec. Doc. No. 30). For the following reasons, petitioner's objections are overruled and the Magistrate Judge's Report and Recommendation are adopted as the opinion of the court.

Facts of Case:

On September 22, 1999, Jason Matthis (hereinafter "Petitioner") was convicted of second-degree murder in Orleans Parish and was sentenced to life in prison without benefit of parole, probation, or suspension of sentence. The Louisiana Fourth Circuit Court of Appeal affirmed petitioner's conviction and sentence on November 29, 2000. *State v. Matthis*, 775 So.2d 558 (La. App. 4th Cir. 2000). On November 9, 2001, the Louisiana Supreme Court

denied petitioner's application for writ of certiorari. *State v. Matthis*, 801 So.2d 358 (La. 2001). Petitioner's conviction became final on February 8, 2002. On November 8, 2002, petitioner filed his first post-conviction relief application. The trial court granted petitioner's post-conviction relief application and following an evidentiary hearing, the trial court granted relief and ordered a new trial on November 8, 2006. (St. ct. rec., vol 1). In response to the trial court's ruling, the state sought supervisory review in the Louisiana Fourth Circuit Court of Appeals, which denied its application, and affirmed the trial court's decision in favor of petitioner's PCRA. *Id* at 801 So. 2d 358. The state then sought review from the Louisiana Supreme Court, which reversed the lower court's grant of petitioner's post-conviction relief, and reinstated petitioner's conviction and sentence on November 2, 2007. *State v. Matthis*, 970 So.2d 505 (La. 2007). Petitioner, thereafter filed a petition for rehearing, which was denied by the Louisiana Supreme Court on January 7, 2008. On July 28, 2008, petitioner filed his habeas corpus petition. (Rec. doc. 1, p. 1).

Law and Argument:

This case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA requires a petitioner to bring his application for a writ of habeas corpus within one year of the date his conviction became final. 28 U.S.C. § 2244(d)(1). However, the AEDPA's one-year limitation period is

tolled for the period of time during which a properly filed application for state post-conviction relief or other collateral review attacking a conviction or sentence is pending in state court. 28 U.S.C. § 2254(d)(2). Additionally, a petitioner has ninety days to file a writ of certiorari in the United States Supreme Court after a decision is rendered by the state's highest court. U.S. Sup. Ct. 13(1); *See also Robert v. Cockrell*, 319 F.3d 690, 694 (5th Cir. 2003).

The Louisiana Supreme Court denied Petitioner's writ application on November 9, 2001. *See Matthis* 801 So. 2d 358. Petitioner's time for seeking further review expired when he did not file any further review petition. Therefore, petitioner's conviction became final and the AEDPA's one-year limitations period for seeking federal habeas relief began to run on February 8, 2002. (Rec. Doc. 26 at 2).

Petitioner argues that his conviction was no longer final for AEDPA purposes when he was granted a new trial on November 8, 2006, by the state. Specifically, petitioner asserts that the running of the AEDPA limitation should have been restarted when he was granted a new trial and was out on bond. (Rec. Doc. 30 at 6).

However, the Fifth Circuit held that a federal court is not obligated to restart the running of AEDPA's limitation period. *Salinas v. Dretke*, 354 F.3d 425 (5th Cir. 2004). In *Salinas*, the United States Fifth Circuit ruled that the AEDPA's one-year limitation period does not restart when a petitioner

acquires the right to file an out-of-time appeal. *Id* at 430. The right to file an out-of-time appeal merely tolls the statute of limitations until the date on which the Court of Criminal Appeals declines to grant further relief. *Id*. The same should apply here.

In terms of the AEDPA and 28 U.S.C. §2244, the petitioner's one-year limitation period began to run on February 8, 2002. (Rec. Doc. 26). Petitioner's limitations period ran uninterrupted for two hundred seventy-two days, until November 8, 2002, when the petitioner timely filed his first post-conviction relief application (PCRA). (Rec. Doc. 30 at 2). The Louisiana Supreme Court denied petitioner's PCRA rehearing, on January 7, 2008. (Rec. Doc. No. 26). Between November 8, 2002 and January 7, 2008, petitioner's PCRA remained pending in state courts, thus tolling his one-year statute of limitation period pursuant to §2244(d)(2). Petitioner's §2244(d) limitation period began to run again on January 7, 2008, in which petitioner only had 93 days remaining under the AEDPA limitations period. It was not until July 28, 2008, two hundred and two days later, did petitioner file his federal habeas petition. (Rec. doc. 1 at 1). The 272 days prior to the first PCRA filing, when combined with the 202 days until the habeas petition was filed far exceeds the AEDPA's one-year statute of limitations. That excessive period of time is fatal to petitioner's claim.

Accordingly, the instant § 2254 habeas application is hereby **DISMISSED WITH PREJUDICE** as untimely.

New Orleans, Louisiana, this 30th day of June, 2009.

/s/ Ivan L.R. Lemelle
IVAN L.R. LEMELLE
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JASON MATTHIS	CIVIL ACTION
VERSUS	NUMBER: 08-4049
BURL CAIN, WARDEN, LOUISIANA STATE PENITENTIARY	SECTION: "B" (5)

REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b) and Local Rule 73.2E(A), presently before the Court is the 28 U.S.C. §2254 application for federal habeas corpus relief of petitioner, Jason Matthis, the State's response thereto, petitioner's motion to stay, and the State's opposition to that motion. (Rec. docs. 1, 8, 20, 19). For the reasons that follow, it is recommended that Matthis' habeas petition be dismissed with prejudice and that his motion to stay be denied.

Petitioner Matthis is a state prisoner who is presently incarcerated at the Louisiana State Penitentiary, Angola, Louisiana. On September 22, 1999, Matthis was convicted of second degree murder following a bench trial in the Criminal District Court for the Parish of Orleans, State of Louisiana. On October 5, 1999, Matthis was sentenced to life imprisonment without benefit of parole, probation, or suspension of sentence. Matthis' conviction and sentence were affirmed on direct appeal to the Louisiana Fourth Circuit Court of Appeal on November 29, 2000, *State v. Matthis*, 775 So.2d 558 (La. App. 4th

Cir. 2000), and writs were denied by the Louisiana Supreme Court on November 9, 2001. *State v. Matthis*, 801 So.2d 358 (La. 2001). Matthis' conviction became final ninety days later, or February 8, 2002, when the time for seeking a writ of certiorari from the U.S. Supreme Court expired and no application therefor was made. *See* U.S. Sup. Ct. R. 13(1); *Roberts v. Cockrell*, 319 F.3d 690, 694 (5th Cir. 2003).

On November 8, 2002, some two hundred seventy-two days after his conviction had become final, Matthis, through retained counsel, filed a post-conviction relief application ("PCRA") in the state trial court.[1] In due course, an evidentiary hearing on the PCRA was held on July 21, 2006 and on November 8, 2006, the trial court granted the requested relief. (St. ct. rec., vol. 1). From that unfavorable ruling, the State sought writs from the Louisiana Fourth Circuit which affirmed the trial courts's [sic] decision on March 5, 2007. *State v. Matthis*, No. 2006-K-1555 (La. App. 4th Cir. March 5, 2007) (unpublished order). (St. ct. rec., vol. 4). The State then sought further review from the Louisiana Supreme Court which, on November 2, 2007, reversed the grant of post-conviction relief, reinstated Matthis'

[1] The copies of the PCRA contained within the state court record submitted by the respondent do not bear a file-stamp date or a date upon which the pleading was served. (St. ct. rec., vols. 4, 5). However, in a "motion to set evidentiary hearing" that he served on the State on June 21, 2004, counsel represented that the PCRA had been filed in the state trial court on November 8, 2002. (St. ct. rec., vol. 1).

conviction and sentence, and denied his subsequent petition for rehearing on January 7, 2008. *State v. Matthis*, 970 So.2d 505 (La. 2007). On July 28, 2008, two hundred two days later, Matthis' counsel filed the habeas petition that is presently before the Court. (Rec. doc. 1, p. 1).

Matthis is now before the Court seeking federal habeas relief, asserting essentially the same clams [sic] he had presented in his PCRA to the state trial court. (Rec. doc. 1). In its response, the State argues that Matthis' petition is untimely under 28 U.S.C. §2244(d) and that is [sic] should be dismissed as such. (Rec. doc. 8). Also before the Court is Matthis' motion to stay and to hold this matter in abeyance pending the resolution of a second PCRA that he recently filed in the trial court on April 22, 2009 on the basis of newly discovered evidence. (Rec. doc. 20). The motion to stay is opposed by the State. (Rec. doc. 19).

Under 28 U.S.C. §2244(d)(1), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub.L.No. 104-132, 110 Stat. 1214 (1996) (effective April 24, 1996), state prisoners like Matthis have one year from the date that their convictions become final to timely seek federal habeas relief. Section 2244(d)(2) further provides that the time during which a prisoner has a properly filed application for post-conviction relief or other collateral review pending before the state courts is not counted against the one-year limitation period. Although the State has done so in this case, the one-year time bar

may be raised by the Court *sua sponte*. *Kiser v. Johnson*, 163 F.3d 326, 328-29 (5th Cir. 1999).

As noted in the procedural history set forth above, subsequent to the date that his conviction became final on February 8, 2002, Matthis had no challenges to his conviction pending before the state courts until he filed his first PCRA on November 8, 2002. By that time, two hundred seventy-two days of the one year allowed by §2244(d) had already passed. Matthis' PCRA and the appeals from it remained pending before the state courts until no later than January 7, 2008 when the Louisiana Supreme Court denied Matthis' petition for rehearing following its decision of November 2, 2007 reinstating his conviction and sentence. At that point, the §2244(d) limitation period undoubtedly began running again and had expired by the time that Matthis filed his federal habeas petition on July 28, 2008. The fact that Matthis apparently filed a second PCRA on April 22, 2009 is of no moment here because the §2244(d) limitation period had by that time already expired. *See Villegas v. Johnson*, 164 F.3d 467, 472 (5th Cir. 1999) (an expired limitation period cannot be revived by filing a state habeas petition). The claims set forth in the petition that is presently before the Court have prescribed and should be dismissed as untimely under §2244(d). As noted earlier, also before the Court is Matthis' motion to stay wherein he asks that the above-captioned matter be stayed pending the resolution of his second PCRA by the state courts. (Rec. doc. 20). Petitioner asserts that the pending

PCRA contains a presently unexhausted claim in the nature of "newly discovered evidence" which casts doubt on the sufficiency of the proof used to convict him. The "newly discovered evidence" to which Matthis refers consists of recently-executed affidavits from two trial witnesses, Charles Melancon and Holly Smith, in which they appear to be recanting their trial testimony and respectively attest that they were promised favors by the prosecutor and were discouraged from talking to Matthis' counsel prior to trial. (Rec. doc. 20-3, pp. 20, 21). Attached to Matthis' motion to stay is a copy of the PCRA that is purportedly pending before the trial court. (Rec. doc. 20-3). In it, under the rubric of his claim of newly discovered evidence, Matthis alleges that the prosecutor both violated the precepts of *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972) and knowingly relied on the perjured and embellished testimony of Charles Melancon to obtain a conviction. (*Id.* at pp. 1-6). Further supporting Matthis' motion to stay are the results of a lie detector test recently administered to him. (*Id.* at pp. 22-23). By way of a supplemental memorandum, Matthis has additionally provided the Court with lie detector test results from Melancon and Smith and a supplement to his PCRA incorporating those results. (Rec. doc. 23-4). For its part, the State opposes Matthis' request for a stay, arguing that the claims currently pending before the court are time-barred and that any presently unexhausted claims should be litigated independently of this matter. (Rec. doc. 19).

In *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528 (2005), the United States Supreme Court held that, in some circumstances, it is appropriate for a federal district court to stay a habeas corpus proceeding in which a petitioner has filed a "mixed petition" containing both exhausted and unexhausted claims in order to allow the petitioner to litigate his unexhausted claims in state court and then return to federal court to obtain review of his perfected petition. "[S]tay and abeyance is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court" and " . . . the district court would abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly meritless," *Rhines*, 544 U.S. at 277, 125 S.Ct. at 1535. "On the other hand, it likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." *Id.* at 278, 125 S.Ct. at 1535.

Having carefully weighed the *Rhines* factors, the Court does not believe that a stay of this matter is appropriate. First, the petition that is presently before the Court is not a "mixed" one containing both exhausted and unexhausted claims; rather, it contains claims that have already been duly considered and rejected by the Louisiana Supreme Court. Second, unlike the petitioner in *Wallace v. Cain*, 2009

WL 270253 (E.D. La. Jan. 9, 2009), Matthis' habeas petition was not filed in a timely fashion. Third, the Court notes that Melancon and Smith testified for both the State and the defense at Matthis' trial and both sides were afforded wide latitude in testing the witnesses' recollection of the events and their motives for testifying the way that they did. The motion to stay does not establish cause, good or otherwise, why Matthis was unable to obtain the witnesses' affidavits sooner. Fourth, while the Court expresses no opinion as to whether petitioner will ultimately be entitled to post-conviction relief by the state courts, recanting affidavits like the ones relied upon by him are viewed by the Fifth Circuit with extreme suspicion, *Spence v. Johnson*, 80 F.3d 989, 1003 (5th Cir.), *cert. denied*, 519 U.S. 1012, 117 S.Ct. 519 (1996), because " . . . the existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground for relief on federal habeas corpus." *Townsend v. Sain*, 372 U.S. 293, 317, 83 S.Ct. 745, 759 (1963). *See also Shaver v. Ellis*, 255 F.2d 509, 511 (5th Cir. 1958) (even the confession by another person does not render a conviction void and subject to collateral attack via habeas corpus).

In short, the habeas claims that are presently before the Court are untimely, a fact that Matthis has not challenged by filing a traverse to the State's response despite being afforded an opportunity to do so. In light of the nature and quality of the claims that were recently discovered by Matthis and which form the basis of his pending, second PCRA, the

Court believes that those claims should be litigated independently of the above-captioned matter.

RECOMMENDATION

For the foregoing reasons, it is recommended that Matthis' habeas petition be dismissed with prejudice and that his motion to stay be denied.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in a magistrate judge's report and recommendation within 10 days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Services Auto. Assoc.*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

New Orleans, Louisiana, this 26th day of May, 2009.

/s/ Alma L. Chasez
UNITED STATES
MAGISTRATE JUDGE